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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/595,643	05/02/2006	Jacques Sagne	P18985-US1	3932
27045	7590	06/01/2009		
ERICSSON INC. 6300 LEGACY DRIVE M/S EVR 1-C-11 PLANO, TX 75024			EXAMINER KASRAIAN, ALLAHYAR	
			ART UNIT 2617	PAPER NUMBER
			MAIL DATE 06/01/2009	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/595,643

**Applicant(s)**

SAGNE ET AL.

**Examiner**

ALLAHYAR KASRAIAN

**Art Unit**

2617

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 02 April 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 13, 14, 16 and 17 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 13, 14, 16 and 17 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 02 April 2009 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/S508)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Remarks*

1. The present Office Action is in response to Applicant's amendment filed on 04/02/2009. **Claims 13, 14, 16, and 17** are now pending in the present application.

**This Action is made FINAL.**

2. The objection to the drawing is withdrawn. The replacement-drawing sheet was received on 04/02/2009 and acknowledged by the Examiner.

3. The objections to specification are withdrawn. The "amendments to the specification" received on 04/02/2009 is acknowledged by the Examiner.

4. The objections to **claims 14 and 17** are withdrawn. The set of amended claims received on 04/02/2009 is acknowledged by the Examiner.

### *Response to Arguments*

5. Applicant's arguments filed 04/02/2009 have been fully considered but they are not persuasive.

On pages 7-8 of the Applicant's arguments/remarks, Applicant argues, "The system and method taught by Grilli, however, is not directed to the receipt of MBMS data and, therefore, does not address that problem... The teachings of Grilli, in contrast, only relate to point-to-point transmissions. In such point-to-point transmissions, a network entity commands a communication device to perform handover measurements"

Examiner respectfully disagrees with Applicant. Even though Grilli does not disclose explicitly 'the receipt of MBMS data, the functionality of the Grilli's invention is the same as the Applicant's claimed invention for digital data (such as multimedia and video) including MBMS where a communication device that autonomously switches, temporarily, to a second frequency to perform a performance measurement, followed by the performance of a process to recover digital data not received during the period that the device was switched to the second frequency. That is disregarding the process of broadcasting data (or MBMS data) at the base station to be transferred to multiple users or mobile stations.

Applicant further discloses, "there is no need to control the switching of the communication device to and from a second frequency, as taught by Grilli... Thus, whereas Grilli fails to disclose a communication device for MBMS data reception, which autonomously switches to a second frequency to perform performance measurements, followed by the performance of outer decoding to recover MBMS data not received during the performing the measurement step, Grilli fails to anticipate claim 13. Whereas independent claim 16 recites analogous limitations, that claim is also not anticipated." Examiner respectfully disagrees with Applicant for several reasons. First, the claimed communication device (claim 16) does not specify which communication device (base station or mobile station) performs the claimed steps. Second, par. 0038 of Grilli clearly discloses the mobile station (communication device) performs the measurement (autonomously) of the first and second frequency (but reporting the dropping quality to the base station).

***Claim Rejections - 35 USC § 102***

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless – (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. **Claims 13, 14, 16, and 17** are rejected under 35 U.S.C. 102(b) as being anticipated by **Grilli et al. (US Patent Application Pub. # 20020093922)** (hereinafter Grilli).

Consider **claim 13**, Grilli discloses a method in a communication device for receiving Multimedia Broadcast and Multicast System (MBMS) data, comprising the steps of:

receiving MBMS data on a first frequency (FIG. 4, par. 0006 for original frequency, par. 0038, 0041; par. 0062 for receiving digital data such as multimedia);

switching to a second frequency to perform a measurement, said switching preformed autonomously by said communication device (FIG. 4, step 420, par. 0006, 0038-0039, 0042 for f2 or target frequency);

performing a measurement (FIG. 4, step 430, par. 0040, 0042);

switching back to the first frequency to continue to receive MBMS data (FIG. 4 step 440, par. 0039, 0042); and,

performing outer decoding to recover MBMS data not received during the performing the measurement step (par. 0045 for forward-error-correction-encoded).

Consider **claim 14 as applied to claim 13 above**, Grilli discloses the step of performing outer decoding comprises the steps of:

using a spreading decoder or despreader to decode an inner code data (par. 0034 for despreading information symbols);

using a turbo or convolutional decoder to decode a first outer code (par. 0045, 0064, par. 0092-0093);

using a redundancy checker decoder to decode a second outer code (par. 0064);  
and,

combining the outer and inner code data to recover the MBMS data not received during the step of performing a measurement (par. 0064).

Consider **claim 16**, Grilli discloses a communication device, comprising:

a processor (FIG. 2, par. 0025-0029, it is inherently taught and well-known in the art that a cell phone or mobile station includes a processor for processing receiving/transmitting data);

a memory coupled to the processor (FIG. 2, par. 0025), wherein the memory includes instructions for performing the process of:

receiving MBMS data on a first frequency (FIG. 4, par. 0006 for original frequency, par. 0038, 0041; par. 0062 for receiving digital data such as multimedia);

switching to a second frequency to perform a measurement, said switching performed autonomously by said communication device (FIG. 4, step 420, par. 0006, 0038-0039, 0042 for f2 or target frequency);

performing a measurement (FIG. 4, step 430, par. 0040, 0042);  
switching back to the first frequency to continue to receive MBMS data (FIG. 4 step 440, par. 0039, 0042); and,  
performing outer decoding to recover MBMS data not received during the performing the measurement step (par. 0045 for forward-error-correction-encoded).

Consider **claim 17 as applied to claim 16 above**, Grilli discloses the process of the performing outer decoding comprises:

using a spreading decoder or despreader to decode an inner code data (par. 0034 for despreading information symbols);

using a turbo or convolutional decoder to decode a first outer code (par. 0045, 0064, par. 0092-0093);

using a redundancy checker decoder to decode second outer code(par. 0064);  
and,

combining the outer and inner code data to recover the MBMS data not received during the performing the measurement step (par. 0064).

### ***Conclusion***

8. The prior art made of record and not relied upon is considered pertinent to Applicant's disclosure.

- a. Cai et al. (U.S. Patent Application Publication # 20040229624) disclose adapting a diversity transmission mode in a wireless communication system.

9. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

10. Any response to this Office Action should be **faxed to (571) 273-8300 or mailed to:**

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

**Hand-delivered responses** should be brought to

Customer Service Window  
Randolph Building  
401 Dulany Street  
Alexandria, VA 22314

11. Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Allahyar Kasraian whose telephone number is (571)



270-1772. The Examiner can normally be reached on Monday-Thursday from 8:00 a.m. to 5:00 p.m.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Rafael Pérez-Gutiérrez can be reached on (571) 272-7915. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free) or 571-272-4100.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist/customer service whose telephone number is (571) 272-2600.

*/Allahyar Kasraian/  
Examiner, Art Unit 2617*

A.K./ak

*/Rafael Pérez-Gutiérrez/  
Supervisory Patent Examiner, Art Unit 2617*

May 25, 2009